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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES
AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretary-General

In its resolution 45/155, the General Assembly, inter alia, encouraged the Chairmen of human rights expert bodies to take part in the work of the Preparatory Committee. Pursuant to paragraph 11 of the same resolution, whereby the Secretary-General was requested to submit to the Preparatory Committee a report on these contributions, an interim report on the study of United Nations human rights treaty bodies,* prepared by Mr. Philip Alston, is enclosed.

* The study is to be circulated separately, at a later date.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. This is an interim report on a thoroughly revised and updated version of a study originally prepared at the request of the General Assembly in 1989. Since that time many of the recommendations contained in the original report have been acted upon. Those matters are therefore not dealt with again in the present version of the study.

2. The treaty régime (along with the Universal Declaration of Human Rights) constitutes the cornerstone of international human rights endeavours (paras. 53-71). Its development is one of the great achievements of the United Nations.

3. That régime has reached a critical crossroads. Its successful future evolution demands that the magnitude and urgency of existing challenges be recognized, that the vital importance of the treaty régime as a whole be reaffirmed and that the quest for creative and effective solutions be pursued with energy and commitment. In doing so, care must be taken to ensure that the integrity of the system, and particularly its ability to safeguard human rights, are not sacrificed to illusory notions of streamlining and efficiency (paras. 7-13).

4. At the time of the Teheran Conference in 1968 not a single human rights treaty body existed. Only a quarter of a century later there are seven. Over the last decade the complexity, reach and potential significance of the treaty régime have expanded enormously. Between 1989 and 1992 alone, the number of States parties to the principal treaties increased by 27 per cent. By the year 2000 there could well be an average of 160 States parties to each of the six treaties, thus generating almost 1,000 reports per reporting cycle and up to 2,000 pages of annual committee reports containing an extensive array of materials of jurisprudential significance (paras. 23-41).

5. In at least some respects, reform of the treaty régime is closely linked to reform of the overall human rights programme. That programme has grown exponentially over the past decade through a process of cumulative incrementalism rather than planned evolution. The question arises as to whether an overview study of selected aspects of the long-term development of the Charter-based system should be undertaken, either by the Secretary-General or one or more independent experts (paras. 15-22).

6. The existing heavy demands upon the Centre for Human Rights seem certain to grow even more rapidly in the years ahead. Already the disparity between demands made and resources provided has exacerbated the situation. Of the many areas affected by

these problems, the present study focuses in particular upon four which are in urgent need of overall review: advisory services, public information, collaboration with other United Nations bodies and agencies, and the relationship between United Nations human rights bodies and their regional counterparts (paras. 15-22).

7. The treaty bodies have become increasingly intertwined with the overall human rights programme of the United Nations. While this phenomenon is greatly to be welcomed, there is a difficult line that must be maintained between, on the one hand, promoting the most effective degree of interaction and, on the other hand, ensuring that the distinctive characteristics of the committees' treaty supervisory functions are not inappropriately blurred or even lost (paras. 53-71).

8. For many reasons, including the possibility to pursue the complex question of the role of cultural factors in the application of human rights norms, universal participation by all countries of the six principal treaties is a goal of the utmost importance (paras. 72-75).

9. The existing level of participation is only around 60 per cent for the Covenants and as low as 40 per cent for the Convention against Torture. Efforts to date to improve this record have been piecemeal, excessively reliant upon repeated exhortation, and lacking in depth as well as resources (paras. 76-80).

10. The United Nations should immediately adopt a three-point programme designed to achieve universality:

(a) Universal acceptance of the package of six core treaties should be identified as one of the foundation stones of the human rights programme. In addition, the six States which are parties to only one of the two International Human Rights Covenants should be urged to ratify the other as soon as possible (para. 82).

(b) The programme should target specific issues to be pursued and develop effective strategies for addressing them. For example, attention should be paid to the specific problems and concerns of the 30 States with a population of two million or less which have not ratified either Covenant. If measures could be devised to enable these States to ratify or accede the total number of parties to the Covenants could rise by some 25 per cent (paras. 83-88).

(c) A target date for achieving universality should be set (the year 2000) and a strategy devised for achieving it. Implementation of the programme should be overseen by specialists and resources should be earmarked for related activities (paras. 89-90).

11. Reporting procedures are of central importance to the international human rights régime. Reporting should be viewed as a multi-faceted undertaking that serves a variety of objectives both domestically and internationally (paras. 91-94).

12. The role of the international treaty bodies is essentially catalytic. The primary role in the reporting process belongs to the relevant actors at the national level. Ideally the treaty bodies major function should be to monitor the domestic monitors. The treaty bodies should focus more systematically on the following issues: (a) dissemination, in local languages, of the text of the relevant instrument; (b) the modalities of preparation of the State report; (c) the submission of information to the treaty body from diverse sources in connection with the examination of State reports; and (d) national level discussion of the results of the Committee-State party dialogue (paras. 95-102).

13. The current level of overdue reports (in excess of 1,000) is chronic and entirely unacceptable. As long as it is tolerated, the credibility of the entire régime is threatened, Governments become accustomed to ignoring their obligations, and the criticisms of those who portray the reporting system as toothless or ineffectual are partly vindicated (paras. 103-111).

14. Ironically, the treaty system is able to function at present by relying upon the continuing delinquency of States parties. Once this problem is resolved, however, major reforms of the present system will be unavoidable (para. 106).

15. Rather than seeking to identify appropriate incentives and disincentives to address this issue, both the treaty bodies and the political organs have tended simply to exhort States to report. It is imperative that this problem now be addressed with determination and imagination.

16. Four steps should be considered: (a) The provision of advisory services, of a very different kind to those presently on offer, to States parties whose reports are more than two years overdue; (b) the immunity from scrutiny, currently enjoyed by non-reporting States, must be removed by scheduling the situation in those States for examination, even in the absence of a report; (c) States parties whose reports are long overdue should be listed by name in resolutions adopted by the Charter-based organs; and (d) States parties should be provided with a positive incentive to report by virtue of the availability of additional technical assistance (paras. 109-122).

17. States are currently subject to an excessive number of demands for information on human rights matters. At a certain point, additional demands might be counter-productive given the available capacity. Many of the demands are essential, but some

could be reduced or avoided. Any solution must satisfy the twin criteria of (i) minimizing the burden placed on States and (ii) maximizing the effectiveness of measures to ensure respect for human rights (paras. 123-125).

18. Requests based on treaty obligations or emanating from special procedures established by the Charter-based organs should be distinguished from other demands and the principal focus of endeavours to reduce the burden should concentrate on requests emanating from sources other than these two (paras. 126-135).

19. In particular, measures should be taken to reduce the paper warfare against States and non-governmental organizations that currently characterizes the process of preparing much of the documentation sought by the Charter-based organs from the secretariat (para. 134).

20. The consolidation of reporting guidelines with respect to a country profile, which has recently been achieved, is a valuable initiative but serves to address only a part of the much larger problem of overlapping reporting requirements (para. 139).

21. As a result of extensive overlapping in the competences of different treaty bodies, States may be required to report on virtually the same issue to five or more different bodies. In an effort to reduce such duplication each State party should be encouraged to identify for its own purposes the instances in which cross-referencing can be used effectively and appropriately in preparing its reports. If necessary, and if resources are available, interested States should be assisted in that task through the Advisory Services Programme. Each of the treaty bodies might also consider providing some guidance to States parties in this respect (paras. 152).

22. States might also consider designating a specific administrative unit at the national level to coordinate the preparation of all reports to treaty bodies (para. 152).

23. Given the need to better understand existing overlap between ILO and United Nations treaty standards the International Labour Office should be asked to consider updating and expanding for informational purposes the analysis it prepared in 1969, which compares the provisions of relevant ILO Conventions with the standards contained in the United Nations human rights treaties. This could be linked to a more concerted effort by the treaty bodies to take full account of instances in which a State party has already reported to the ILO on the same subject-matter (paras. 142-143 and 155).

24. The meeting of chairpersons should be specifically mandated to consider, on the basis of policy options submitted by the secretariat, how the various committees might reduce overlapping

or duplication in respect to specific issues such as the rights of the child (para. 146-148).

25. The overlapping competences of different treaty bodies can result in a situation in which a State may be required to report on virtually the same issue to several different treaty bodies. In an effort to reduce such duplication each State party should be encouraged to identify for its own purposes the instances in which cross-referencing can effectively and appropriately be used in preparing its reports. Other measures might include designating a specific administrative unit to coordinate the preparation of all such reports. The treaty bodies and the ILO should also contribute to the development of more effective approaches (paras. 149-155).

26. Given the increasing number of specific themes, such as the rights of women, the disabled, the ageing etc., to which all treaty bodies are being asked to pay particular attention, it should be considered whether flexible modalities can be found for allocating primary responsibility for addressing a given dimension of an issue to one body or another (paras. 156-163).

27. Long-term options for reducing reporting burdens should be considered. They include: (i) reducing the number of treaty bodies and hence the number of reports required (paras. 164-166); (ii) encouraging States to produce a single "global" report to be submitted to all relevant treaty bodies (paras. 167-173); and (iii) replacing the requirement of comprehensive periodic reports with specifically-tailored reports (paras. 174-182).

28. Reform of the financing arrangements relating to the treaty bodies is one of the major achievements of recent years. States parties to the two treaties concerned should be urged to ratify the amendments as soon as possible (paras. 183-184).

29. The meeting time available to the treaty bodies as a whole has been expanding steadily, although still insufficiently, and is likely to reach 34 weeks with six weeks of working groups in 1993. That figure may need to be doubled when the system is working effectively (paras. 185-193).

30. Members of all committees should be provided with honoraria, rather than only three out of six as at present (paras. 194-196).

31. The existing levels of secretariat servicing provided to the treaty bodies is entirely inadequate. Computerization needs to be expedited; a documentation unit established; an inventory of committee needs should be drawn up; CEDAW should be serviced by the Centre for Human Rights; specialist expertise must be developed within the secretariat, in the context of a major restructuring of existing servicing arrangements; and greatly increased resources need to be made available (paras. 197-206).

32. The various intergovernmental agencies need to be involved in the work of the treaty bodies, but on a much more discerning basis than current approaches might imply. Overall, effective and targeted coordination needs to be put on the inter-agency agenda in a far more substantive way than hitherto (paras. 209-217).

33. Relations between the treaty bodies and non-governmental organizations are badly in need of review. A non-governmental liaison office needs to be established within the Centre for Human Rights (paras. 218-237).

34. Every effort should be made to maximize normative consistency. As standards proliferate and new treaty bodies are created the risks of inconsistency will continue to grow. Confusion and diminished credibility could result. In the longer term the implications of creating additional treaty bodies need to be very carefully weighed. In the short term, the desirability of seeking normative consistency should be reiterated and every effort made to ensure that any potential inconsistency is brought to the attention of the body concerned by the secretariat (paras. 238-241).

35. The Secretary-General might consider revising or supplementing United Nations Action in the Field of Human Rights so as to provide a more accessible record of the jurisprudence emerging under the various bodies. The development of more specialized expertise within the secretariat should also be considered (paras. 242-243).

36. At present the United Nations and regional human rights treaty bodies pay very little attention to one another's jurisprudence. In order to improve the chances of a coherent overall international human rights regime evolving, and to reduce the likelihood of widely diverging and even directly incompatible approaches and interpretations, efforts need to be made to encourage cross-fertilization. The treaty bodies should be kept informed of developments elsewhere, interaction between the universal and regional systems should become less superficial and more substantive, the respective treaty bodies or their representatives should get together occasionally, and data bases should be developed to enable the jurisprudence of each body to be available to the others (paras. 245-254).

Request for comments to be reflected in the final study

37. The present report is an interim one, as requested by the General Assembly. The final version of the report will be submitted to the Commission on Human Rights at its fiftieth session, in 1994. It should be noted that that version will deal with several other issues not included here, including in particular, public information and advisory services.

38. That version will also take full account of any comments received by the independent expert in the intervening period. Any such comments are warmly invited.